

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **WESTERN DISTRICT OF PENNSYLVANIA**

4       DAVINA HARMAN,                                   )

5                                   Plaintiff                                   )

6                                   v.                                   )

7       ETOURANDTRAVEL, INC.,                                   )

8                                   Defendant                                   )

Case No.:

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

9                                   \_\_\_\_\_  
10                                   **COMPLAINT**

11               DAVINA HARMAN (“Plaintiff”), by and through her attorneys, KIMMEL  
12       & SILVERMAN, P.C., allege the following against ETOURANDTRAVEL, INC.  
13       (“Defendant”):

14                                   **INTRODUCTION**

15               1.       Plaintiff’s Complaint is based on the Telephone Consumer Protection  
16       Act, 47 U.S.C. § 227 *et seq* (“TCPA”).

17                                   **JURISDICTION AND VENUE**

18               2.       Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See  
19       Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

20               3.       Defendant conducts business in the Commonwealth of Pennsylvania,  
21       and as such, personal jurisdiction is established.

22               4.       Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).  
23  
24  
25

**PARTIES**

5. Plaintiff is a natural person residing in Slippery Rock, Pennsylvania 16057.

6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

7. Defendant is a company with its principal place of business located at 3626 Quadrangle Boulevard, Orlando, Florida 32817.

8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153 (39).

9. At all relevant times, Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**FACTUAL ALLEGATIONS**

10. Plaintiff has a cellular telephone number that she has had for more than one (1) year.

11. Plaintiff has only used this number as a cellular telephone number.

12. The phone number has been assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls.

13. Beginning in October 2014, and continuing through January 2015, Defendant called Plaintiff on her cellular telephone on a repetitive and continuous basis.

1           14. When contacting Plaintiff on her cellular telephone, Defendant used  
2 an automatic telephone dialing system and/or automatic and/or pre-recorded  
3 messages.

4           15. Defendant's automated messages identified its company as the caller.

5           16. Defendant's telephone calls were not made for "emergency  
6 purposes."

7           17. Plaintiff disputes having ever provided Defendant consent to call her  
8 cellular telephone, as she did not sign up to receive promotional calls to book a  
9 vacation through Defendant.  
10

11           18. Nevertheless, in October 2014, Plaintiff revoked any consent  
12 previously given to Defendant to place telephone calls to her cellular telephone  
13 number.  
14

15           19. Defendant heard and acknowledged Plaintiff's revocation of consent  
16 and demand to stop calling her cellular telephone number.  
17

18           20. Despite the above, Defendant persisted in calling Plaintiff on her  
19 cellular telephone.  
20

21           21. As a result, Plaintiff obtained counsel in order to stop Defendant's  
22 automated calls to her cellular telephone.

23           22. On December 9, 2014, the undersigned sent written correspondence  
24 to Defendant, advising the Plaintiff was represented by counsel and to cease and  
25

1 desist all communications with Plaintiff, including all calls. See Exhibit A,  
2 December 9, 2014, Letter of Representation.

3 23. Defendant received the undersigned's cease and desist letter on  
4 December 12, 2014. See Exhibit B, USPS Tracking Information.  
5

6 24. Defendant, however, continued to contact Plaintiff on her cellular  
7 telephone using an automatic telephone dialing system and/or automatic and/or  
8 pre-recorded messages.

9 25. Specifically, Defendant called Plaintiff's cellular telephone on:  
10 December 26, 2014, at 11:59 a.m.; December 30, 2014, at 11:19 a.m.; December  
11 31, 2014, at 1:09 p.m.; and January 2, 2015, at 2:27 p.m.  
12

13 26. Plaintiff's experiences with calls by Defendant are quite similar to  
14 those alleged against Defendant in a class action filed in 2013 captioned in the  
15 Middle District of Florida, Orlando Division as, GONZALEZ v.  
16 ETOURANDTRAVEL, INC., et al., 6:13-CV-827-ORL-36-TBS.  
17

18 27. Upon information and belief, Defendant continues to conduct its  
19 business in a manner that violates the TCPA.  
20  
21  
22  
23  
24  
25

**DEFENDANT VIOLATED THE  
TELEPHONE CONSUMER PROTECTION ACT**

**COUNT I**

28. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

29. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using an automated message and/or prerecorded voice and/or automatic telephone dialing system.

30. Defendant's calls to Plaintiff were not made for emergency purposes.

31. Defendant's calls to Plaintiff were not made with Plaintiff's prior express consent.

32. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

33. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

34. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, DAVINA HARMAN, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. §227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. §227(b)(3)(B);
- c. Treble damages of \$1,500 per violative telephone call pursuant to 47 U.S.C. §227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. §227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, DAVINA HARMAN, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: January 15, 2015

By: /s/ Craig Thor Kimmel  
CRAIG THOR KIMMEL  
Attorney ID No. 57100  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
Fax: (877) 788-2864  
Email: [kimmel@creditlaw.com](mailto:kimmel@creditlaw.com)